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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 75/845,350, INTELLIWEAR  
Published in the *Official Gazette* on October 30, 2001

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MARK D. TANNEN,  
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Opposer,  
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vs.  
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JAY MACK,  
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Applicant.  
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Opposition No. \_\_\_\_\_



02-27-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #77

**NOTICE OF OPPOSITION**

Opposer, Mark D. Tannen, an individual, doing business as American Intelliware, with a business address of P.O. Box 199, New York, New York 10044-0204, believes he will be damaged by the issuance of a registration to Jay Mack (hereinafter "Applicant"), an individual with a residence or place of business at 5495 Pinehurst Dr., Riverside, CA 92504, upon its Application Serial No. 75/845,350 for the mark INTELLIWEAR in International Class 9 for "wearable computer hardware and computer software, namely, wearable micro processor-powered computers and associated software used for hands free data entry, data storage, data retrieval and data processing, and used for electronic messaging and for connecting to the Internet," filed on December 1, 1999 and based on an intent-to-use the mark.

The grounds for opposition are as follows:

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Opposer, Mark D. Tannen, through his predecessors in interest, has been engaged for over sixteen (16) years in the development, marketing and sale of desktop and portable computer hardware and/or software systems, and computer software, including, micro-processor-powered computers, manuals and

associated software, and other software and hardware used for or in connection with data entry of graphics, sound and text by means of video, keyboard or hands-free (voice), data storage, data retrieval, and data (graphics and word) processing, and used for or in connection with word processing, faxing, electronic messaging or email, and for or in connection with connecting to networks of other computers and to the Internet. Since that time, Opposer has also rendered computer consulting services, system configuration and installation services.

2. Opposer's computer hardware and software systems, computer software, services and manuals have been developed, marketed and/or sold in numerous quantities in interstate commerce since at least as early as June 15, 1984.

3. Opposer has also used the mark AMERICAN INTELLIWARE, AI AMERICAN INTELLIWARE and Design or variants thereof on and in connection with such desktop and portable computer hardware and software systems, services and manuals since at least as early as June 15, 1984. Opposer's AMERICAN INTELLIWARE and AI AMERICAN INTELLIWARE and Design marks are inherently distinctive. Since a date long prior to the filing date of the above identified application and continuing through the present, the marks AMERICAN INTELLIWARE and AI AMERICAN INTELLIWARE and Design have been identified with Opposer and have appeared on a significant amount of product packaging, and advertisements for Opposer's goods and services.

4. As a result of the long, extensive and continuous development, marketing, advertising, sale, use and promotion of products bearing or services rendered under Opposer's marks, AMERICAN INTELLIWARE and AI AMERICAN INTELLIWARE and Design have acquired substantial consumer recognition, possess a favorable reputation and distinctiveness with an invaluable amount of goodwill, solely signifying Opposer as the source of computer hardware and software systems, computer software, services and/or related manuals and have become assets of considerable value to Opposer.

5. Opposer is also the owner of valid and subsisting U.S. registration No. 1,347,429 for the mark AI AMERICAN INTELLIWARE and Design. The above registration is valid and in force, and incontestable. Hereinafter the above marks, including those registered and/or used in commerce by Opposer, are referred to individually and collectively as the "AMERICAN INTELLIWARE Marks" which are inherently distinctive.

6. On information and belief, on December 1, 1999, Applicant filed Application Serial No. 75/845,350 to register INTELLIWEAR for "wearable computer hardware and computer software, namely, wearable micro processor-powered computers and associated software used for hands free data entry, data storage, data retrieval and data processing, and used for electronic messaging and for connecting to the Internet" in International Class 9, based on an intent-to-use the mark for such goods.

7. Opposer has priority over Applicant because its use and/or registration date for the AMERICAN INTELLIWARE Marks precede the Applicant's filing date for its intent-to-use application.

8. On information and belief, the goods to which Applicant's alleged INTELLIWEAR trademark will be applied and the goods/services upon which Opposer's AMERICAN INTELLIWARE Marks are extensively used and/or registered are or are likely to be related.

9. Applicant's alleged INTELLIWEAR mark is confusingly similar to the AMERICAN INTELLIWARE Marks owned by Opposer; it falsely suggests a connection with Opposer; it constitute a false representation that Applicant's goods are approved or sponsored by Opposer or that Applicant's business is connected or affiliated with Opposer or that INTELLIWEAR is a version of Opposer's AMERICAN INTELLIWARE Marks, and its use and registration contemporaneously with Opposer's AMERICAN INTELLIWARE Marks is likely to cause consumer confusion, mistake and deception as to the source of Applicant's goods, all within the meaning of 15 U.S.C. §1052(a) and §1052(d).

10. In view of the foregoing, Opposer would be damaged by the registration of Applicant's claimed mark INTELLIWEAR within the meaning of 15 U.S.C. §1063.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to Applicant on its Application Serial No. 78/845,350.

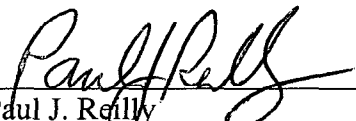
The original and one copy of this Notice of Opposition is enclosed herewith along with a check in the amount of \$300 for the filing fee for the Notice of Opposition. If the fee is found inadequate, please draw the amount from Opposer's undersigned attorneys' deposit account No. 02-4377.

Respectfully submitted,

BAKER BOTTS, L.L.P.

Date: February 27, 2002

By:

  
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Attorneys for Opposer, Mark D. Tannen

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited on the date indicated below with the United States Postal Service "Express Mail Post Office To Addressee Service," in an envelope addressed to: Box TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513

Paul J. Reilly  
Attorney Name

February 27, 2002  
Date of Deposit

  
Signature

February 27, 2002  
Date of Signature